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Attorneys for Plaintiff
Nutrishare, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Nutrishare, Inc., a California corporation,

Plaintiff,

v.

BioRx, LLC, an Ohio Limited Liability
Company,

Defendant.

Case No. 2:08-CV-01252-WBS-EFB

**DECLARATION OF KERRY STONE
REGARDING ACTUAL CONFUSION**

I, Kerry Stone, hereby declare as follows:

1. I am an individual residing in La Jolla, California. I make this declaration of my own personal knowledge, and if called to testify, could and would testify consistent with the facts stated herein.

2. I am a registered dietitian with Crescent Healthcare, Inc., a home infusion provider. I have known of Nutrishare for several years and am acquainted with its co-founder, Tom Diamantidis.

3. As I make this declaration, I am attending the 2008 Oley Foundation Conference in San Diego, California, which began on Thursday, July 26, 2008 and ends tonight. I am representing Crescent Healthcare, Inc., which is one of the exhibitors at this conference. A sign on the table at lunch yesterday indicated that lunch was sponsored by NutriThrive. The name

1 “NutriThrive” looks so similar to “Nutrishare” that I got confused and mistakenly believed that
2 lunch was going to be sponsored by Nutrishare. By the time I took a lunch break yesterday, the
3 food had run out and I was left with very little to eat. So I mentioned to Nutrishare’s founder
4 Tom Diamantidis, “well, you sponsored the lunch, didn’t you?” Tom said, “no, NutriThrive is
5 sponsoring the lunch.”

6 I declare under penalty of perjury under the laws of the United States and the State of
7 California that the foregoing is true and correct to the best of my knowledge.

8 Dated this 28th day of June, 2008, at San Diego, CA.

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11 _____
12 Kerry Stone
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